Supreme Court, U.S.
FILED
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85 - 1972

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

EDWARD RONWIN,

Petitioner,

vs.

HON. WILLIAM A. HOLOHAN; HON. JACK D. H. HAYS; HON. JAMES DUKE CAMERON; and HON. STANLEY G. FELDMAN,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

I. Are Rules 28(c)(XII)(C) and (F), Vol. 17A, Arizona Revised Statutes, which govern hearings in contested applications for admission to the State Bar of Arizona unconstitutional on face or as applied by Respondents?

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OPINIONS BELOW

On June 7, 1984, the United States District Court for the District of Arizona entered an order which (i) declared that said court lacked subject matter jurisdiction; nevertheless, (ii) said court proceeded to adjudge Rules 28(c)(XII)(C) and (F), Vol.

17A A.R.S. to be constitutional and (iii) awarded attorneys' fees to Respondents. On the same day, a judgment was entered by said court. On appeal, the United States Court of Appeals, Ninth Circuit, entered a Memorandum decision on January 8, 1986 in which said court (i) reversed the district court by ruling that the lower court did have subject matter jurisdiction and (ii) reversed the award of attorneys' fees, but (iii) affirmed the district court's holding that said rules are constitutional. On March 6, 1986, the Ninth Circuit denied Petitioner's Petition for Rehearing. All said orders and judgments are reproduced in the Appendix.

JURISDICTION

This Petition is filed within 90 days after March 6, 1986. This Court's jurisdiction is invoked pursuant to 28 U.S.C.§1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution

Fifth Amendment

No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *

Fourteenth Amendment

Section 1. * * *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law: * * *

Rules of the Arizona Supreme Court, Volume 17A Arizona Revised Statutes

Rule 28(c)(XII)(C)

C. Formal Hearings on Character and Fitness. If the Committee on Character and Fitness[1] is unable to make the findings required to support a recommendation for the applicant's admission with respect to char-

1 - In Petitioner's case, Respondents have replaced their Committee on Character and Fitness by themselves and all applications for bar admission by Petitioner are handled by Respondents directly.

acter and fitness, the Committee shall hold such hearing or hearings as may be reasonably required to enable the Committee to pass upon the applicant's qualifications. * * *

Rule 28(c)(XII)(F)

F. Review by the [Arizona] Supreme Court. 1. An applicant aggrieved by any decision of * * *the Committee on Character and Fitness may * * * file a verified petition with [Respondents] for a review. * * *

2. * * * Thereupon [Respondents] shall consider the papers so filed together with the petition and response and make such order, hold such hearings and give such directions as it may in its discretion deem best * * *.

STATEMENT OF THE CASE

The complaint was filed on January 20, 1984 following denial of Petitioner's application for admission to the State Bar of Arizona which was the tenth (10th) consecutive application made by Petitioner that Respondents have denied without presenting

any charges against Petitioner or allowing any hearing at any stage in the adjudication of the application despite the fact that Petitioner had passed the Arizona State Bar examination in July, 1982 and had demanded an oral, evidentiary hearing on any questions concerning his application. The complaint alleged that two written rules of the Arizona Supreme Court; i.e., Rules 28(c)(XII)(C) and (F), address the question of hearings in contested bar application situations and that if said rules are constitutional on face then Respondents apply said rules in an unconstitutional manner. After an Answer was filed, Petitioner moved for summary judgment and Respondents did likewise. Thereafter, several other motions, responses and replies were filed. On June 7, 1984, the district court entered its order and on a separate sheet of paper, its judgment. The order denied Petitioner's motion for summary judgment and granted Respondent's motion for same.

Subsequently, on July 3, 1984, the district court granted $7,125.00 in attorney's fees to Respondents. Petitioner timely appealed. The United States Court of Appeals for the Ninth Circuit reversed the district court on the lower court's view that it lacked subject matter jurisdiction (yet, the lower court had proceeded to adjudicate the question presented here); reversed the lower court's award of attorney's fees to Respondents, but affirmed the lower court's view that said rules are constitutional. Petitioner filed a timely Petition for Rehearing in the Ninth Circuit which was denied on March 6, 1986.

REASONS FOR GRANTING THE WRIT

I. Rules 28(c)(XII)(C) and (F), Vol. 17A, Arizona Revised Statutes, which govern hearings in contested applications for admission to the State Bar of Arizona are unconstitutional on face or as applied by Respondents.

On several occasions this Court has said that no one can be excluded from the practice

of a profession, including law, by procedures which deny due process and that the due process required includes hearing, the right to call witnesses and to cross-examine adverse witnesses, and to have an impartial decisionmaker. In addition, some statement of the charges for denial are required. Willner v. Committee on Character and Fitness, 373 U.S. 96, 103-105, 83 S.Ct. 1175, 1180-1181 (1963); Schware v. Bd. of Bar Examiners, 353 U.S. 232, 238, 77 S.Ct. 752, 756 (1957); Greene v. McElroy, 360 U.S. 474, 492, 79 S.Ct. 1400, 1411 (1959); Goldberg v. Kelly, 397 U.S. 254, 267, 269-271, 90 S. Ct. 1011, 1020-1022 (1970).

At first glance, Rule 28(c)(XII)(C) appears to make it mandatory that Respondent's Committee on Character and Fitness hold a hearing, but the subsequent language converts the mandatory language to discretion. Rule 28(c)(XII)(F) is clearly discretionary. These are the only rules of Respondents which

deal with hearings in connection with contested bar applications. If Respondents interpret said rules as discretionary, then they are clearly unconstitutional on face since, under said rules, Respondents can persist in denying applications for bar admission without hearings or the other elements of due process. That is precisely what Respondents have done in Petitioner's case by denying Petitioner's last ten (10) bar applications without any hearing or due process during the last ten (10) years. Respondents do not appear to have addressed said rules as such, but in Application of Levine, 97 Ariz. 88, 397 P.2d 205, 207 (1964), Respondents made it clear that they recognize this Court's views as expressed in the decisions cited above at 7. If Respondent's position in Application of Levine is taken as Respondent's interpretation that Rules 28(c)(XII)(C) and (F) make it mandatory to hold at least one hearing before a bar applica-

tion is denied or after one is denied, then said rules are facially constitutional. In that event, Respondents are applying said rules unconstitutionally by their persistent refusal to allow any hearing in Petitioner's case. That clearly is arbitrary and capricious and unconstitutional conduct, Willner; Schware, Greene; Goldberg. Furthermore, Petitioner is not the only applicant who has been denied hearing on bar applications that are contested.

The Ninth Circuit considered that said rules are constitutional relying on the authority of Mathews v. Eldridge, 424 U.S. 319, 335 (1976) which is a social security disability case. The notable point is that the Ninth Circuit failed to address the thrust of this Court's decisions in Willner; Schware; Greene and Goldberg. Moreover, the Ninth Circuit wrote, p. 3, Memorandum decision:

> ...we conclude these rules give applicants 'a meaningful opportunity to present their case' and a mandatory predeprivation hearing therefore is not necessary...

Fine! No hearing before denial of a bar application, but where is the hearing after or midway through the denial process? In Petitioner's situation, there is no hearing before, midway or after denial of his applitions;and that is unconstitutional.

CONCLUSION

Respondents, the district court and the Ninth Circuit all misread this Court's desions in Willner; Schware; Greene and Goldberg. The Ninth Circuit is a large circuit affecting many millions of citizens. Therefore this Court should clarify what it means by "due process" and when it is due by granting the Writ.

Respectfully submitted

_____

Edward Ronwin

(APPENDIX FOLLOWS)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Caption)

Filed: March 6, 1986

(CA) NO. 84-2201
D.C. No. CV 84-102
PHX-CAM

ORDER

Before: BROWNING, Chief Judge, SNEED and HUG, Circuit Judges

The panel has voted to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

(Caption)

Filed: Jan. 8, 1986

(CA) No. 84-2201
D.C. No. CV 82-102 PHX-CAM

MEMORANDUM*

Appeal from the United States District Court for the District of Arizona Carl A. Muecke, District Judge, Presiding. Argued and Submitted December 3, 1985 - Phoenix, Arizona

Before: BROWNING, Chief Judge, SNEED and HUG, Circuit Judges

Appellant Edward Ronwin appeals the district court's grant of summary judgment to defendants, justices of the Arizona Supreme Court, in Ronwin's action under 42 U.S.C. §1983 (1982), alleging the court's bar admission rules are unconstitutional because they do not require a mandatory hearing upon denial of an application. We affirm the summary judgment but reverse the grant of attorney's fees to appellees.

Appellant, a member of the Iowa bar, was first denied admission to the Arizona bar in

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

1974, after a formal hearing resulted in a finding that appellant was mentally unfit to engage in the practice of law. Application of Ronwin, 113 Ariz. 357, 555 P.2d 315 (1976). Appellant has since filed nine additional unsuccessful applications for admission, and numerous lawsuits in federal court challenging denials of these successive applications. After passing the bar examination in July, 1982, appellant applied for admission a tenth time. The Arizona Supreme Court concluded that an evidentiary hearing was unnecessary and denied his application. Matter of Ronwin, 139 Ariz. 576, 680 P.2d 107 (1983). Appellant then brought this action.

The district court concluded that it lacked subject matter jurisdiction over appellant's suit. We disagree. Appellant's complaint presents a constitutional challenge to the general application of provisions of the state's rules governing admission to the bar

that relate to evidentiary hearings, and requests general declaratory and injunctive rather than personal relief. Federal courts have jurisdiction over such an action. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Brown v. Board of Bar Examiners, 623 F.2d 605, 609 (9th Cir. 1980).

We affirm the grant of summary judgment because the rules challenged by appellant are constitutional as a matter of law. Rule 28(c)(XII)(C) provides that the Committee on Character and Fitness "shall hold such hearing or hearings as may be reasonably required to enable the Committee to pass upon the applicant's qualifications." 17A Ariz. Rev. Stat. Sup. Ct. Rule 28(c)(XII)(C)(1985). Subsection F of that rulte gives an applicant the right to review of the Committee's decision in the Arizona Supreme Court. Applying the due process tests

enunciated in Mathews v. Eldridge, 424 U.S. 319, 335 (1976), we conclude these rules give applicants "a meaningful opportunity to present their case" and a mandatory pre-deprivation hearing therefore is not necessary. Id. at 349.

A district court may award attorney's fees in an action under section 1983 only when the action is unfounded, meritless, unreasonable, frivolous,or brought vexatiously or in bad faith. See Ellis v. Cassidy, 625 F.2d 227, 230 (9th Cir.1980). None of these conditions is satisfied here. Appellant properly invoked the district court's subject matter jurisdiction, and his constitutional challenge is not frivolous.

Appellant's other contentions are meritless.

We decline to award attorney's fees on appeal as a sanction under Fed. R. App. P.38.

AFFIRMED IN PART, REVERSED IN PART.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

(Caption)

Filed: June 7, 1984

Civ 84-102 PHX CAM

JUDGMENT

This action came on for hearing before the Court, the Honorable C.A. Muecke, United States District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that Defendants' Cross-Motion for Summary Judgment having been granted, that the Plaintiff take nothing and the action is hereby dismissed.

Dated at Phoenix, Arizona this 7th day of June, 1984.

W.J.FURSTENAU, CLERK

By: /s/ ANA E(?) BACA
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

(Caption) Filed: June 7,1984

ORDER

Plaintiff in this action filed a Motion for Summary Judgment, to which defendants responded with a Cross-Motion for Summary Judgment, and oral argument was scheduled for Monday, June 4, 1984. Only counsel for defendants appeared for the hearing, while plaintiff, acting pro per, indicated that he would not appear, since he had filed a Request for a Writ of Mandamus, and it is his feeling that Judge Muecke should recuse himself from all further proceedings. A copy of that hand-written letter is attached to this Order. (The copy was not attached to the copy of the Order that Petitioner received).

Nevertheless, no authority has been presented to this Court for the proposition that a Writ of Mandamus is considered to have been issued when it was applied for. In any event,

the defendants made no oral argument to the Court, and stated that they would submit the matter to the Court on the basis of the pleadings already filed.

The complaint in the instant action is plaintiff's tenth application for admission to the State Bar of Arizona. The instant application was filed in June of 1983, while plaintiff passed the Arizona Bar examination for the first time in July of 1982. Plaintiff appears to be requesting a written statement of all charges and/or reasons that the defendants refused to admit him to the State Bar of Arizona, as well as an evidentiary hearing on any of the reasons given.

The parties have not presented any genuine issues of material fact which would preclude the Court from ruling on either of these motions at this time. Essentially, three basic issues before this Court are:

(1) Should plaintiff's present claim be barred by the doctrines of res judicata or

collateral estoppel?

(2) Does the Court lack subject matter jurisdiction to hear this matter?

(3) Is Rule 28(c) of the Arizona Rules of Court unconstitutional, in that it does not comply with due process requirements?

RES JUDICATA AND COLLATERAL ESTOPPEL

The doctrine of res judicata "...provides that when a final judgment has been entered on the merits of a case '[i]t is a finality as to the claim or demand in controversy, including parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.'" Nevada v. United States, ___U.S.___, 103 S.Ct. 2906, 2918 (1983), citing Cromwell v. County of Sac, 94 U.S. 351, 352 (1876).

It is instructive to examine the past history of plaintiff's actions both in the state

and federal courts.

In Application of Ronwin, 113 Ariz. 357, 555 P.2d 315 (1976), plaintiff was not granted permission to sit for the bar examination in 1974, and a two-day hearing took place under the auspices of the Arizona Supreme Court's Special Committee on Examinations and Admissions. Plaintiff was deemed not physically nor mentally able to engage in the active and continuous practice of law, and he declared that he had been deprived of due process during the hearing. Cert. was denied by the United States Supreme Court on February 28, 1977.

Later, in Ronwin v. Daughton, No. CIV 76-872 PHX-MLR (D.Ariz. 1977), plaintiff alleged that defendants had conspired to orchestrate a sham hearing before the Special Committee and that the design of the conspiracy was to deprive plaintiff of the rights, privileges and immunities secured by the First, Fifth and Fourteenth Amendments. In that case,

judgment was entered in favor of defendants on March 4, 1977, on the grounds that the court lacked subject matter jurisdiction and that the complaint did not present a substantial federal question. Additional grounds for the decision were that the claim was barred by res judicata and that the members of the Arizona State Bar Committee were protected by the doctrine of judicial immunity. This decision was affirmed by the Ninth Circuit Court of Appeals on August 9, 1979.

Then, in Ronwin v. Segal, No. CIV 76-924 PHX-MLR (D. Ariz. 1977), plaintiff once again alleged that defendants had conspired to deprive him of his rights, privileges and immunities under the Constitution, and sought an order commanding defendants to cease all further acts of conspiracy, and to specifiy their reasons for denying him admission.The action was dismissed, and the dismissal was later affirmed on November 14, 1980, on appeal to the Ninth Circuit.

Another action was brought in 1979, in which plaintiff maintained that the action of the defendants represented an unconstitutional application of Rule 28(c) of the Arizona Rules of Court. The motion to dismiss was granted in Ronwin v. Gage, No. CIV 78-214 PHX-MLR (D. Ariz. 1979), and no appeal was taken.

On November 5, 1977, the Arizona Supreme Court issued an order directing that all further applications by plaintiff were to be forwarded directly to the it(sic). The Court further ruled that since plaintiff had made no further showing of any substantial change in his mental con(sic) since that Court's decision in Application of Ronwin, supra, his application for membership in the State Bar of Arizona would be denied. Plaintiff requested review by filing a Petition for Writ of Certiorari with the United States Supreme Court, which was denied on October 2, 1978 in Ronwin v. The Supreme Court of Arizona,

439 U.S. 828.

On March 6, 1979, plaintiff filed another action, based upon the Civil Rights Act, to challenge the Arizona Supreme Court's denial of his December, 1978 application for admission to the State Bar of Arizona,claiming again that the conduct of defendants represented an unconstitutional application of Rule 28(c), supra. Judgment was entered by this Court in Ronwin v. Von Ammon, No. CIV 79-175 PHX-WEC (D. Ariz.1980), and affirmed by the Ninth Circuit by memorandum opinion in Ronwin v. von Ammon, Nos. 81-5148 and 81-5149 (9th Cir., Aug. 16, 1982).

The next significant decision by the state court was In re Ronwin, 136 Ariz.566, 667 P.2d 1281, cert. denied sub nom. Ronwin v. Supreme Court of Arizona, __U.S.__, (Nov. 7, 1983), wherein plaintiff again asked the United States Supreme Court to determine whether the Arizona Supreme Court could deny an application for admission to the Bar without

adequate notice and without hearing, and could declare an application(sic) mentally unable to practice law using the techniques of "trial by judicial notice." The petition was denied.

Another Petition for Writ of Mandamus to the Supreme Court of Arizona, In re Edward Ronwin, No. 83-899 __U.S.__, 52 U.S.L.W. 3551 (Jan. 23, 1984), was denied, where plaintiff claimed that the state Court had refused to "obey the due process clause of the Fifth and Fourteenth Amendments; this Court's decisions; and its own rules and decisions which require that Bar applicants be accorded an opportunity for hearing with due process safeguards before final determination of their applications for admissions to practice law."

It is clear to the Court, based on all of the above cases, that no new issues have been raised in the instant case,and that the principles of res judicata and collateral estoppel

definitely come into play, despite plaintiff's apparent belief that each time there is a new violation (i.e., each time he is denied admission to the State Bar of Arizona), a new evidentiary hearing is necessary.

Plaintiff cites Feldman v. Gardner, 661 F.2d 1295 (D.C.Cir. 1981), where several plaintiffs who had unsuccessfully sought permission to sit for the District of Columbia bar examination brought separate actions challenging the validity of a rule which prevented them from so sitting, the the(sic) court held that proceedings before the District of Columbia Court of Appeals were of a non-judicial character and did not produce a judgment reviewable exclusively by the Supreme Court so that the plaintiffs' district court suits were jurisdictionally appropriate for consideration and disposition of their constitutional claims.

In contrast to Feldman, supra, however,

plaintiff in the instant case both sat for and passed the Arizona State Bar Examination in 1982, and has failed to provide any new information regarding his mental capabilities to practice law.

In Matter of Ronwin, 667 P.2d 1281, 1285 (Ariz. 1983), (superceded by 139 Ariz. 576, 680 P.2d 107 as referred to in the Court of Appeals Memorandum--Petitioner's note), the Arizona Supreme Court stated that the issue "..is not merely capacity and capability, but also behavior. On the former issue, we must defer to the doctors and accept their findings that Ronwin is'capable.'...On the latter, we must examine the record to determine if it establishes that Ronwin's personality disorder impairs his conduct to such a degree that he is not mentally able to engage in the practice of law."

The Court further stated at 667 P.2d 1287 that "..The examples cited suffice to establish that Ronwin's reaction to adversity mani-

fests itself in behavior which is grossly improper for a lawyer and which cannot be tolerated. This conclusion does not evince a lack of toleration for Ronwin; it simply acknowledges that we can make no special rule for Ronwin."

SUBJECT MATTER JURISDICTION

As the court held in Brown v. Board of Bar Examiners of State of Nevada, 623 F.2d 605, 610 (9th Cir. 1980), a state court's decision on an individual application for admission to the bar may not be disturbed in an original suit in federal district court, and that orders may be reviewed only by the United States Supreme Court. The court noted: "...despite superficial indicia of a general constitutional attack, Brown's cause of action was inextricably intertwined with her endeavor to acquire a waiver...An individual claim may naturally be utilized to confer sufficient standing to challenge general rules and regulations, but appellate

review of a decision on an individual application is not available from a federal district court."

There is a long line of cases which have held that the only way for an applicant to obtain review of a state court's action in denying admission to the bar is by writ of certiorari or appeal to the United States Supreme Court. Miller v. Washington State Bar Association, 679 F.2d 1313 (9th Cir. 1982); Coogan v. Cincinnati Bar Association, 431 F.2d 1209 (6th Cir. 1970).

The critical question is whether an action is a challenge to a rule of general application or an attack on a state court's application of a rule of a particular applicant, and where the action falls in the latter category, the federal district court simply lacks subject matter jurisdiction to hear the case. Plaintiff's arguments that an individual claim is enough to permit an attack on general rules and regulations and that the inclusion of a

demand for personal relief provides no basis for rejecting a challenge to a rule of general application are not convincing in the light of the authorities provided by defendants on this issue.

CONSTITUTIONALITY OF RULE 28(C)

Rule 28(c)(XII)(C) states, in pertinent part, that "[I]if the Committee on Character and Fitness is unable to make the findings required to support recommendation for the applicant's admission with respect to character and fitness, the Committee shall hold such hearing or hearings as may be reasonably required to enable the Committee to pass upon the applicant's qualifications..."

There is no question that the Arizona Supreme Court found that the plaintiff was not mentally able to engage in the active and continuous practice of law and denied his applications for admission since he had failed to show any substantial change in his mental condition from the time of the denial

of his first application. In In re Ronwin, 667 P.2d 1281 (Ariz. 1983), the Court concluded that an evidentiary hearing was unnecessary, since a determination of the issues on which plaintiff wished to produce evidence was irrelevant to the Court's determination of plaintiff's mental ability to engage in the practice of law.

The Court also found that plaintiff's action exceeded occasional anger or loss of control when he was confronted by authority. Once an applicant or practicing attorney has been found deficient in those qualities that a state requires of its practitioners, the burden is on that person to show a change in circumstances. Matter of Braverman, 549 F.2d 913 (4th Cir. 1976); Levenson v. Mills, 294 F.2d 397 (1st Cir. 1961), cert. denied, 368 U.S. 954 (1962).

This Court agrees, in this regard, with defendants statement that requiring plaintiff to shoulder the burden of showing a

change in circumstances is no more a denial of due process of law than requiring the plaintiff to establish a prima facie case to avoid dismissal of an action.

Based upon the foregoing circumstances and arguments, and upon a thorough examination of all of the authorities cited by the parties herein, this Court is convinced that plaintiff's Motion for Summary Judgment should be denied, while defendants' Cross-Motion for Summary Judgment should be granted.

Accordingly,

IT IS ORDERED that plaintiff's Motion for Summary Judgment, filed on March 12, 1984, is denied

IT IS FURTHER ORDERED that defendants' Cross-Motion for Summary Judgment, filed on April 11, 1984, is granted.

DATED this 5 day of June, 1984

/s/ C.A.Muecke

C.A. Muecke, Chief Judge

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QUESTION PRESENTED FOR REVIEW

DOES ARIZONA SUPREME COURT RULE 28(c)XII COMPLY WITH THE REQUIREMENTS OF DUE PROCESS ON ITS FACE AND AS APPLIED BY RESPONDENT COURT?

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Rule 28(c)XII.F. 4, 6, 18

Rules of the United States Supreme Court:

Rule 17. 1

Rule 21(j) 1

OPINIONS BELOW

The Opinions of the United States Court of Appeals, Ronwin v. Holohan, No. 84-2201 (9th Cir. Jan. 8, 1986), and the United States District Court, No. CIV 84-102 PHX CAM (D. Ariz. 1984) are set forth in the Appendix to the Petitioner's Brief.

STATEMENT OF JURISDICTION

Respondents do not question the jurisdiction of this Court to issue a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit in an appropriate case under 28 U.S.C. § 1254.

Petitioner, however, has not complied with Rules 17 and 21(j), Rules of the United States Supreme Court, as he has failed to specify a special or important reason for this Court to grant review on a Writ of Certiorari. The decision by the lower court is consistent with the decisions on similar matters by this

Court, the other federal courts of appeals, and the Arizona Supreme Court.

STATUTES AND RULES INVOLVED

Rule 28(a) and the applicable portions of Rule 28(c), Rules of the Arizona Supreme Court, are set forth in the Appendix at A-1.

STATEMENT OF THE CASE

On June 6, 1983, Petitioner filed with the Arizona Supreme Court his tenth application for admission to the State Bar of Arizona.[1] As part of that proceeding, Petitioner filed a document entitled "Request," demanding that the court provide him a written statement "of all charges and/or reasons that this Court has, or believes itself to have, for refusing to admit RONWIN to the State Bar

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[1] A partial history of Petitioner's unsuccessful attempts to be admitted to the State Bar of Arizona appears in Matter of Ronwin, 136 Ariz. 566, 667 P.2d 1281 (1983).

of Arizona." In his "Request," Petitioner also demanded an evidentiary hearing "presided over by an impartial decision maker(s)," preceded by discovery, and affording him the opportunity to call, examine and cross-examine witnesses and to present documentary evidence.

Although the Arizona Supreme Court allowed Petitioner to submit by affidavit or offer of proof any factual material he deemed relevant, Petitioner refused to submit such information. See Matter of Ronwin, 136 Ariz. 566 at 575, 667 P.2d 1281 at 1290 (1983).

After the Arizona Supreme Court denied his application for admission, Petitioner filed a Petition for a Writ of Mandamus with this Court, alleging that the state court refused to "obey the due process clause of the Fifth and Fourteenth Amendments; the District Court's decisions; and its own rules and decisions

which require that Bar applicants be accorded an opportunity for hearing with due process safeguards before final determination of their applications for admissions to practice law." Petition at 4, In re Ronwin, 465 U.S. 1004 (1984). Petitioner argued that Rule 28(c)XII.F "clearly makes the hearing requirement discretionary with the Arizona Court. Such written rules are in conflict with this Court's holdings. . . ." Id. at 7. This Court refused to issue the writ. In re Ronwin, supra.

On January 20, 1984, Petitioner filed this action in the United States District Court in further challenge to the Arizona Supreme Court's denial of his "Request." Petitioner again alleged that the Respondents, as members of the Arizona Supreme Court, violated the Fifth and Fourteenth Amendments, the Civil Rights Act and the prior rulings of this Court in

their interpretation and application of the Rules of the Arizona Supreme Court.

On June 7, 1984, the District Court granted summary judgment for the Respondents. The Court of Appeals affirmed the entry of judgment in favor of Respondents. Petitioner's request for a Writ of Certiorari followed.

ARGUMENT

A. Rule 28(c)XII Is Constitutionally Valid On Its Face.

Rule 28(c)XII.C requires the Arizona Supreme Court's Committee on Character and Fitness, if it is unable to recommend an applicant for admission, to "hold such hearing or hearings as may be reasonably required to enable the Committee to pass upon the applicant's qualifications." Further, the Rules of the Arizona Supreme Court include provisions pertinent to the conduct of those formal hearings. Rule 28(c)XII.E. In connection with such proceedings, the applicant has the right

to subpoena and take the depositions of any witnesses. Rule 28(c)XII.D. Arizona courts have interpreted these provisions to include implicitly the right of the applicant to cross-examine adverse witnesses and to present evidence at the hearing. See Application of Levine, 97 Ariz. 88, 397 P.2d 205 (1964). Once the hearing concludes, the Committee must find the facts separately from its decision. Rule 28(c)XII.E.2.

An applicant who is aggrieved by the Committee's decision may file a verified petition with the Arizona Supreme Court to obtain review of the Committee's action. Rule 28(c)XII.F. The Court is required to "hold such hearings and give such directions as it may in its discretion deem best adapted to a prompt and fair decision." Ultimately, the Arizona Supreme Court has "the duty of resolving those questions, one way or the other, on

the basis of the competent evidence before [it]." Application of Burke, 87 Ariz. 336, 339, 351 P.2d 169, 171 (1960).

This procedure for Arizona State Bar admission, which leaves the holding of further hearings to the discretion of the Arizona Supreme Court, is consistent with this Court's interpretation of the Due Process Clause. In Morrissey v. Brewer, 408 U.S. 471, 481 (1972), this Court stated:

> Due process is flexible and calls for such procedural protections as the particular situation demands.

Petitioner argues that this Court's ruling in Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963) makes evidentiary hearings, including confrontation and cross-examination, mandatory in any contested bar admission proceeding. The holding of Willner is not that broad. The principle stated in Willner is simply that

> [p]rocedural due process often

> requires confrontation and cross-examination of those whose word deprives a person of his livelihood.

Id. at 103, (emphasis added). See Matthews v. Eldridge, 424 U.S. 319, 335 (1976).

In Willner, this Court determined that the petitioner was denied procedural due process because the state court, in rejecting Mr. Willner's application, apparently relied on ex parte statements by unidentified persons, the substance of which was not disclosed to Mr. Willner and to which he was given no opportunity to respond. Because the denial by the court possibly was based on information from persons whose veracity and credibility could be questioned by the applicant, the right of confrontation and cross-examination applied.[2] See also Greene v.

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[2] Three years prior to the Willner decision, the Arizona Supreme Court also (footnote continued)

McElroy, 360 U.S. 474, 492 (1959); Goldberg v. Kelly, 397 U.S. 254, 269-71 (1970). This Court, however, did not hold that evidentiary hearings are mandatory for all admission applications, regardless of the basis for denial of admission or the amount of procedural protection accorded.

If the Arizona Supreme Court decides that additional hearings are not necessary, the court considers only the evidence contained in the record of the Committee hearings. In those Committee proceedings, the applicant had the full opportunity to exercise his right to confront and cross-examine witnesses. The rules adopted by the Arizona Supreme Court

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(footnote continued from previous page)

held that secret accusations could not be used to deny admission to the State Bar. Application of Burke, 87 Ariz. 336, 351 P.2d 169 (1960).

fully comply with the Due Process Clause.

B. The Respondents' Application of Rule 28(c)XII Did Not Deny Petitioner Due Process of Law.

After Petitioner applied to take the July 1974 bar examination, the Arizona Supreme Court's Committee on Examinations and Admissions informed Petitioner that the Committee had been unable to find him "mentally and physically able to engage in active and continuous practice of law" as required by Rule 28(c)IV.3 and, therefore, would not grant him permission to sit for the July 1974 examination.

In September 1974, the Arizona Supreme Court formed its Special Committee on Examinations and Admissions ("Special Committee") to conduct a formal hearing pursuant to Rule 28(c)XII.D to determine whether Petitioner was mentally able to engage in the active and continuous practice of law. Petitioner, represented by counsel, participated in the extensive

two-day evidentiary proceeding, which included the testimony of 20 witnesses and the admission of numerous exhibits, and received the opportunity to confront and cross-examine all witnesses.

After reviewing the transcript of the hearings, the Arizona Supreme Court agreed that Petitioner was not mentally able to engage in the active and continuous practice of law. See Application of Ronwin, 113 Ariz. 357, 555 P.2d 315 (1976), cert. denied, 430 U.S. 907 (1977). Specifically, the Court stated:

> He appears mentally unable to reasonably deal with the type of social interaction involved in dealing with clients, other members of the Bar and the public.

Id. at 359, 555 P.2d at 317.

Petitioner received a hearing and a review of the Committee's findings by the Arizona Supreme Court. Yet, Petitioner urges that, even in light of the initial hearing and subsequent events of record,

the Arizona Supreme Court must convene a subsequent hearing each time Petitioner applies for admission to the state bar. Neither the subsequent events involving Petitioner nor the Due Process Clause supports such a conclusion.

In response to Petitioner's sixth application for admission, the Arizona Supreme Court ordered in 1977 that all applications of the Petitioner be forwarded directly to it, because the members of the Committee on Character and Fitness were defendants in pending litigation with the Petitioner. The Court subsequently denied Petitioner admission because he had failed to show any substantial change in his mental condition. The Court, however, did not hold that Petitioner would never be entitled to another hearing. Instead, the court required only that Petitioner, to obtain another evidentiary hearing, first

establish that a substantial change in his mental condition has occurred. Specifically, Petitioner must show that he no longer possesses

> [l]ong-standing personality traits [which] indicate an obvious inability to get along with authority figures under situations of minor stress and conflict, whether or not these personality deficiencies rise to the level of medically recognized and categorized mental disorders.

Id. at 359, 555 P.2d at 317 (emphasis added).

The long-standing personality traits evidenced by Petitioner and recognized by the court in 1976, still existed in 1983 when the Arizona Supreme Court denied Petitioner's eighth and ninth applications for admission to the State Bar of Arizona. Matter of Ronwin, 136 Ariz. 566, 667 P.2d 1281 (1983). In that decision, the court noted:

> Ronwin's transgressions exceed occasional anger or loss of control. They form a pattern and a way of life which, on this record, appears to be

> applicant's normal reaction to personal or professional adversity.

Id. at 573-74, 667 P.2d at 1288-89. Given the court's repeated findings of unacceptable long-term behavior, the Arizona Supreme Court's requirement that Petitioner initially show that his condition has substantially changed is certainly reasonable.

This approach by the Arizona court is consistent with the accepted practice of other states, which also impose upon an applicant the burden of establishing that he is of "good moral character" or "mentally able to practice law." In addition, once an applicant or practicing attorney has been found deficient in those qualities that a state requires of its practitioners, the burden is upon that person to show a change in his condition. See Matter of Braverman, 549 F.2d 913 (4th Cir. 1976); In re Alker, 307 F.2d 880 (3rd Cir.), cert. denied, 371 U.S. 923 (1962);

Levenson v. Mills, 294 F.2d 397 (1st Cir. 1961), cert. denied, 368 U.S. 954 (1962).

The principles of due process do not dictate, and practical considerations make impossible, convening multiple hearings to revisit matters previously heard and considered by the Arizona Supreme Court. This Court has, in fact, recognized the state courts' freedom to gauge an applicant's fitness to practice law on a case-by-case basis. See In re Griffiths, 413 U.S. 717 (1973). This individualized approach to applicant review is consistent with the general rule that

> [n]o single model of procedural fairness, let alone a particular form of procedure, is dictated by the Due Process Clause. [Citations omitted.] "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." Mitchell v. W. T. Grant Co., 416 U.S. 600, 610 (1974).

Kremer v. Chemical Construction Corp., 456 U.S. 461, 483 (1982).

The Arizona Supreme Court has

accepted from Petitioner and considered ten applications for state bar admission. Petitioner has been given numerous opportunities to provide prima facie evidence of a change in his mental ability to practice law. Petitioner cannot or will not bear the burden of making such a showing. Until he does so, the principles of due process do not require additional evidentiary hearings.

C. This Action is Barred by the Doctrine of Res Judicata.

Through this action, Petitioner seeks a declaration that Rule 28 is unconstitutional, on its face and as applied. Repeatedly, and unsuccessfully, Petitioner raised the same claim in previous state and federal actions. In Matter of Ronwin, 136 Ariz 566, 667 P.2d 1281, cert. denied sub nom. Ronwin v. Supreme Court of Arizona, 464 U.S. 977 (1983), Petitioner demanded an evidentiary hearing in connection with his eighth and

ninth applications for admission to the State Bar of Arizona. The Arizona Supreme Court considered that request and discussed in detail its reasons for determining that an evidentiary hearing was unnecessary and inappropriate. Id. at 574-75, 667 P.2d at 1289-90.

In connection with his tenth application for admission to the State Bar, Petitioner again demanded an evidentiary hearing, the denial of which provides the basis for this action. Although Petitioner's pleadings before the Arizona Supreme Court are less than a model of clarity, Petitioner apparently attempted to challenge the constitutionality of Rule 28(c)XII in those proceedings. Even if he did not specifically raise the issue of Rule 28(c)XII's constitutionality before the state court, Petitioner clearly could have done so. Because that opportunity was available to Petitioner, any failure

to challenge the validity of Rule 28(c)XII before the state court barred him from raising that issue in later proceedings. See Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371 (1940).

When the state court rejected Petitioner's argument, he petitioned this Court for a Writ of Mandamus, arguing that subsection F of Rule 28(c)XII "clearly makes the hearing requirement discretionary with the Arizona Supreme Court. Such written rules are in conflict with this Court's holdings. . . ." Id. at 7. This Court refused to issue the writ. In re Ronwin, 465 U.S. 1004 (1984).

Petitioner also either unsuccessfully challenged, or failed to question the validity of, Rule 28(c)XII in several other federal actions. See Ronwin v. Supreme Court of Arizona, 439 U.S. 828 (1978); Ronwin v. Segal, 634 F.2d 636 (9th Cir. 1980), cert. denied, 450 U.S. 1041

(1981); Ronwin v. Gage, 78-214 PHX MLR (D. Ariz. 1979); Ronwin v. von Ammon, No. CIV 79-175 PHX WEC (D. Ariz. 1980), aff'd mem., 688 F.2d 848 (9th Cir. 1982); Ronwin v. von Ammon, No. CIV 80-289 PHX CAM (D. Ariz. 1980), aff'd mem., 688 F.2d 848 (9th Cir. 1982); Ronwin v. Holohan, No. CIV 83-1036 PHX CLH (D. Ariz. 1983), aff'd mem., No. 83-2676 (9th Cir., March 7, 1985). In each of these cases, Petitioner unsuccessfully argued that the language or application of Rule 28(c)XII was unconstitutional, and/or that an evidentiary hearing should be held.

Because the issue of the constitutionality of Rule 28(c)XII has been determined or, alternatively, Petitioner has foregone prior opportunities to challenge its validity,

> [p]ublic policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be

> considered forever settled as between the parties.

Baldwin v. Iowa State Traveling Men's Ass'n, 283 U.S. 522, 525 (1931).

The prior resolution of Petitioner's due process challenge by the state court, which has unquestioned authority to decide federal constitutional questions, provides further reason for applying the doctrine of res judicata:

> When a state court has adjudicated a claim or issue, these doctrines [res judicata and collateral estoppel] also serve to "promote the comity between state and federal courts that has been recognized as a bulwark of the federal system." Id. at 96.

Kremer v. Chemical Construction Corp., 456 U.S. 461, 468, n.6 (1982).

CONCLUSION

The decision of the Ninth Circuit Court of Appeals was consistent with the decisions of this Court and the due process requirements of the Fourteenth Amendment. This action is also barred by the doctrine of res judicata. The

Petition for Writ of Certiorari should be denied.

Respectfully submitted.

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July 3, 1986

APPENDIX

RULES 28(a), 28(c)IV.3, 28(c)XII.C, 28(c)XII.D, 28(c)XII.E and 28(c)XII.F, RULES OF THE ARIZONA SUPREME COURT

Rule 28. Examination and Admission

28(a)[1] **Committees on examinations and admissions; powers and duties.** The examination and admission of applicants for membership in the State Bar of Arizona shall conform to this Rule. For such purposes two committees shall be constituted. One Committee shall be the Committee on Examinations. The other Committee shall be the Committee on Character and Fitness. Each Committee shall consist of seven active members of the State Bar appointed by the Court upon the recommendation of the Board of Governors of the State Bar which shall recommend at least three members of the State Bar for each appointment to be made. Members of the two Committees

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[1]Rule 28(a) is now Rule 33(a).

shall serve for seven year terms. In the case of the Committee on Character and Fitness now being separately established the seven initial appointments shall be for terms of seven, six, five, four, three, two and one year respectively. Thereafter, upon the expiration of a member's term, the Court shall appoint a new member to serve for a term of seven years. As to each Committee, in the event of a resignation or inability of a committee member to serve, the Court shall appoint another person to serve the unexpired term. The Committee on Examinations shall examine applicants and advise this Court and the Committee on Character and Fitness of those who have passed the examination or examinations required for admission to the State Bar of Arizona. The Committee on Character and Fitness shall recommend to this Court for admission to the State Bar of Arizona

those individuals who, having passed the examination or examinations required for admission to the State Bar of Arizona, are deemed by the Committee to be qualified on the basis of character and fitness. The Court will then consider the recommendations and either grant or deny admission.

28(c) Rules governing admission of applicants to the State Bar of Arizona, as amended.

IV. APPLICANT REQUIREMENTS AND QUALIFICATIONS[2]

On the basis of a properly completed application timely filed the applicant will be entitled to sit for the bar examination.

No applicant for admission to the State Bar of Arizona shall be recommended for admission by the Committee on Character and Fitness unless the

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[2]Rule 28(c)IV is now Rule 34(c).

Committee is satisfied:

* * *

3. That he is mentally and physically able to engage in active and continuous practice of law.

XII.[3] RULES GOVERNING PROCEDURE BEFORE THE COMMITTEES

C. Formal Hearings on Character and Fitness. If the Committee on Character and Fitness is unable to make the findings required to support a recommendation for the applicant's admission with respect to character and fitness, the Committee shall hold such hearing or hearings as may be reasonably required to enable the Committee to pass upon the applicant's qualifications. Notice of such hearing or hearings shall be given to the applicant as to the subject and purpose of the hearing.

After the hearing or hearings the

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[3]Rule 28(c)XII is now Rule 36.

Committee on Character and Fitness shall report to the Court its findings that the applicant meets the character and fitness requirements and should be admitted or that the Committee is unable to make such findings and recommendation, as the case may be. The applicant shall at the same time be informed of the Committee's recommendation.

D. Formal Hearings, Subpoena and Depositions. Upon the issuance of the Notice of Hearing hereinbefore provided for, the proceeding thenceforth shall be and is considered a civil matter pending before this Court referred to the Committee on Examinations or the Committee on Character and Fitness for hearings, findings and decision as to the right of such applicant to be admitted to the bar examination applied for.

* * *

Thereafter, all of the Rules of Civil Procedure authorizing, relating to and governing depositions in civil proceedings within and outside the state shall become applicable and shall authorize and govern depositions desired either by applicant or by the Committee on Character and Fitness in connection with said hearing.

Either the Committee on Character and Fitness or the applicant shall be entitled to have subpoenas (including duces tecum) issued by the Clerk of this Court to require the attendance of witnesses at said hearing and any continuance thereof. The party desiring issuance of such subpoena shall file the application therefor with any Justice of this Court with a brief statement of the reasons for requiring such subpoena accompanied by a form of order authorizing the Clerk of this Court to

issue such subpoena and the form thereof for issuance by the Clerk.

In the event the Committee on Character and Fitness by vote of a majority of its members finds that the proposed hearing will be complex, or for other reasons deemed sufficient, the Committee may certify to this Court that in its opinion an examiner should be appointed from State Bar members to further investigate and present the evidence bearing upon the issue of the applicant's qualifications to be admitted to the examination applied for, and upon receipt thereof the Chief Justice of this Court, provided he approves the need thereof, shall appoint such an examiner to further investigate said matter and to present all available evidence upon the hearing aforesaid; provided, however, that the foregoing provision shall not be deemed or construed as denying to the

applicant the right to be represented by counsel of the applicant's choosing who may represent applicant fully and independently of the duties and responsibilities of such examiner.

E. Conduct of Hearings.

1. One or more members of the Committee on Character and Fitness shall conduct the hearing, one of whom shall be designated by the chairman as the presiding member, who shall announce all rulings of the Committee which shall be made without a vote of the members unless the applicant shall request a ruling upon any matter by a majority of the members in attendance at the hearing. In the event the entire membership of the Committee shall not be present and participate in all hearings no final decision shall be deliberated or reached by the Committee until a transcript of all hearings shall be available to all

members for review of the testimony and evidence received when any member was absent.

2. After the hearing and any continuance thereof are concluded, the Committee on Character and Fitness shall promptly convene as soon as the transcript thereof is available, and reach and announce their findings and decision as to the right of such applicant to be admitted to the examination applied for. The Committee shall find the facts separately from its decision.

F. Review by the Supreme Court.

1. An applicant aggrieved by any decision of the Committee on Examinations or the Committee on Character and Fitness may within 20 days after such occurrence file a verified petition with this Court for a review. The petition shall succinctly and briefly state the facts

which form the basis for the complaint, and applicant's reasons for believing this Court should review the decision of the Committee on Examinations or the Committee on Character and Fitness.

2. A copy of said petition shall be promptly served upon the chairman or some member of the Committee from which the complaint arose and that Committee shall within 15 days of such service transmit said applicant's file and a response to the petition fully advising this Court as to that Committee's reasons for its decision and admitting or contesting any assertions made by applicant in said petition. Thereupon this Court shall consider the papers so filed together with the petition and response and make such order, hold such hearings and give such directions as it may in its discretion deem best adapted to a prompt and fair decision as to the rights and

obligations of applicant judged in the light of that Committee's and this Court's obligation to the public to see that only qualified applicants are admitted to practice as attorneys at law.

Supreme Court, U.S.
FILED
AUG 13 1986
JOSEPH F. SPANIOL, JR.
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No. 85-1972

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

EDWARD RONWIN,

Petitioner,

vs.

HON. WILLIAM A. HOLOHAN; HON. JACK D. H. HAYS; HON. JAMES DUKE CAMERON; and HON. STANLEY G. FELDMAN,

Respondents.

REPLY BRIEF TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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ARGUMENT

Respondents urge that this Court's decision in Willner v. Committee on Character and Fitness, 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed.2d 224 (1963) does not require evidentiary hearings including confrontation

and cross-examination in all contested bar admission proceedings, (Respondents' Brief at 7-8), because the language in Willner reads, in part, 373 U.S. at 103:

> ..procedural due process often requires confrontation and cross-examination of those whose words deprive a person of his livelihood (emphasis added).

Use of the word, often, in the quotation from Willner is taken by Respondents to mean that denials of bar admission applications can be made by Respondents without any hearing either before or after denial, Respondents' Brief at 7-8.

To buttress their argument, Respondents cite Matthews v. Eldridge,424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), Respondents' Brief at 8. Matthews declared that in the context of that case, no predeprivation hearing was required, 424 U.S. 335; but Respondents fail to admit that Matthews requires, 424 U.S. at 333, 96 S.Ct. at 902:

> ...some form of hearing..before an individual is finally deprived of a property interest..The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society..

More recently this Court voiced the same standard in Parratt v. Taylor, 451 U.S. 527, 540, 101 S.Ct. 1908, 1915, 68 L.Ed.2d 420 (1981):

> ..Our past cases mandate that some kind of hearing is required at sometime before a State finally deprives a person of his property interests...

Subsequent comment in Parratt makes it clear that the rejection of an absolute requirement of hearings in all cases prior to the initial deprivation of property interests, is based on, 451 U.S. at 541, 101 S.Ct. at 1916:

> ..the impracticality in some cases of providing any preseizure hearing under a state-authorized procedure, and the assumption that at some time a full and meaningful hearing will be available..

Willner nor Matthews are authority for what Respondents contend; i.e., that Res-

pondents can deny ten (10) applications filed by Petitioner in ten (10) years without any hearing whatsoever either before or after those denials; without any right to cross-examine and confront adverse witnesses; without any statement of charges presented at any time; and, plainly, without any due process whatsoever.

That this Court used the qualifying word, often, in Willner, see above at 2, certainly did not mean that Respondents can repeatedly deny applications without any hearing whatsoever. It is more likely that the term, often, used in Willner meant what the Court said in Matthews quoted above at 3. But, in this case, Respondents were not faced with an "impracticality" which prevented hearing before "seizure" of Petitioner's right to practice law; i.e., by denial of Petitioner's bar admission applications.

The problem is that this Court has not indicated what type of situations always require a predetermination hearing and when post-determination hearings are absolutely required.

To dispell the doubts and to clarify the thrust of Willner, which can affect other professions and occupations besides the law, and to force the Respondents, who have denied hearings to other persons in Arizona as they have Petitioner, to recognize that they have no license to blatantly deny all hearing both before and after they deny a contested bar application, this Court should hear and determine this matter.

Respondents raise the theme that the action below was barred by the doctrine of res judicata or collateral estoppel, Respondents' Brief at 16-20.

Res judicata and collateral estoppel bar the past, they cannot be given in futuro effect. Thus, the application which gave

rise to this action was never ruled upon earlier at any time. Even if it may have involved similar or identical facts to those found in earlier applications, it was removed from the next preceeding application by approximately twelve (12) months. Thereby, as this Court has held, Lawlor v. National Screen Service Corp., 349 U.S. 322, 75 S.Ct. 865, 868, 99 L.Ed. 1122 (1955), no res judicata effect applies.

But, a more important reason for denying a res judicata or collateral estoppel effect is that the right to practice law is a constitutionally protected right, Willner, supra, 373 U.S. at 103-105, 83 S.Ct. at 1180-1181; Schware v. Bd of Bar Examiners, 353 U.S. 232, 238, 77 S.Ct. 752, 756, 1 L.Ed.2d 796 (1957). That right is a continuing right; for each citizen it ends when the citizen ceases to be a citizen by death or otherwise. Just as res judicata or collateral estoppel cannot bar

the right to free speech, so those doctrines should not be allowed to forever bar a citizens right to practice law or any other profession or occupation.

CONCLUSION

For the foregoing reasons, the Writ of Certiorari sought herein by Petitioner should be granted.

Respectfully submitted

_____

Edward Ronwin

August, 1986